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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/749,854

12/30/2003

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6570P055

9420

45062 7590 06/26/2008

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EXAMINER

KOROBV, VITALI A

ART UNIT

PAPER NUMBER

2155

MAIL DATE

DELIVERY MODE

06/26/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/749,854	<b>Applicant(s)</b> BUDZISCH ET AL.	
	<b>Examiner</b> VITALI KOROBV	<b>Art Unit</b> 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-18, 20-28 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-8, 10-18, 20-28 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/01/2008</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **RESPONSE TO RCE**

1. This Office Action is in response to an RCE filed on 04/01/2008. Claims 1-8, 10-18, 20-28 and 30 are currently pending and have been examined in this Office Action.

2. The applicant's arguments with respect to claims the pending claims have been fully considered but are moot in view of the following new grounds of rejection.

### ***Continued Examination Under 37 CFR 1.114***

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous office action has been withdrawn pursuant to 37 CFR 1.114. The Applicant's submission filed on 04/01/2008 has been entered.

### ***Paper Submitted***

4. It is hereby acknowledged that the following papers have been received and placed of record in the file: **Information Disclosure Statement** as received on 04/01/2008 was considered.

### ***Specification***

5. The disclosure is objected to because of the following informalities:

- \* The specification contains misspelled words.
- \* The specification incorrectly identifies multiple (five) items on various figures by wrong item numbers.
- \* The specification refers to a figure that does not exist.

Appropriate corrections are required in response to this Office Action.

***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11-18 and 20 are not limited to tangible embodiments. In view of Applicant's disclosure, specification page 44, paragraph [00109], the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g., [hard disk drives, flash memory, optical disks, CD-ROMs, DVD ROMs, RAMs, EPROMs, EEPROMs, magnetic or optical cards]) and intangible embodiments (e.g., [...embodied in a carrier wave or other propagation medium via a communication• link, e.g., a modem or network connection]). As such, the claims are not limited to statutory subject matter, and therefore non-statutory.

To overcome this type of § 101 rejection the claims need to be amended to include only the physical computer •media and not a transmission media or other intangible or non-functional media, e.g., carrier medium and transmission media would be not statutory but storage media would be statutory.

To expedite a complete examination of the instant application the claims rejected under 35 USC 101 (nonstatutory) above further rejected as set forth below in anticipation of applicant amending these claims to place them within the four categories of invention.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-8, 10-18, 20-28 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 11 and 21 refer to "IS". It is not clear what "IS" stands for, making the cited claims indefinite.

All dependent claims are rejected as having the same deficiencies as the claims they depend from.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-3, 11-13 and 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by the U.S Patent Application Publication No. 2004/0139194 A1 by Naganathan, hereinafter Naganathan.

Regarding claim 1, Naganathan teaches a method, comprising: repeatedly receiving request messages at a testing application running on a server or servlet engine ([0012] - users are regularly contacting the service), said repeatedly receiving occurring during execution of a testing scenario ([0013] - "dummy transactions" indicate testing, rather than "real life" transactions. [0044] - the transactions are synthetic), each of said request messages identifying the same set of software components that are: a) servable and/or invocable by said server or servlet engine ([0044] - modules are use loadable); b) associated with the same said testing scenario ([0044] - web service testing scenario or calendar service testing scenario); and, c) used by a same business logic process within an IS infrastructure ([0044] - web service testing scenario or calendar service testing scenario); and, said testing application, in response to each of said request messages in executing said testing scenario, performing the following: testing each of said one or more software components for availability ([0012] - availability testing) and preparing and sending onto a network a response message to report availability or unavailability for each of said one or more software components to an entity that sent said response message's corresponding request message ([0013] - users are informed of availability or unavailability of a service being tested), wherein, at least one of said software components requires a login procedure for its availability test

and each of said request messages include a userid for said login procedure ([0034] - user authentication).

Regarding claim 2, Naganathan teaches the method of claim 1 wherein at least one of said software components further comprises a web page and said testing for availability of said web page further comprises attempting to fetch said web page ([0044] and [0052]- web service. [0045] - support for HTTP protocol).

Regarding claim 3, Naganathan teaches the method of claim 2 wherein said web page's URL is identified in each of said request messages ([0045] - support for HTTP protocol).

Claims 11-13 are rejected in view of the above rejection of claims 1-3. Claims 11-13 are essentially the same as claims 1-3, except that they set forth the invention as a computer program product rather than a method, as do claims 1-3.

Claims 21-23 are rejected in view of the above rejection of claims 1-3. Claims 21-23 are essentially the same as claims 1-3, except that they set forth the invention as a system rather than a method, as do claims 1-3.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4-8, 10, 14-18, 20, 24-28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naganathan in view of the U.S. Patent No. 6,842,891, issued to Zhang, hereinafter Zhang.

Regarding claim 4, Naganathan teaches the method of claim 1.

Naganathan does not explicitly teach that the method is further comprising creating a request object from the content of said request message with a request message class.

However, Zhang, in analogous art, directed to distributed test framework, teaches a method further comprising creating a request object from the content of said request message with a request message class (Abstract, 2:53-61 - dynamic attribute classes. 4:18-31 - implementation of the invention on Java platform. Java is an object oriented language. See also 4:32-38).

Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to combine the teachings of Zhang regarding implementation of the invention in Java with the teachings of Naganathan in order to enhance cross-platform compatibility of Naganathan's invention. Naganathan, combined with the cited teachings of Zhang, is hereinafter referred to as NZ1.

Regarding claim 5, NZ1 teaches the method of claim 4 further comprising creating a scenario object from said request object with a scenario object class (Zhang, 4:18-31 - implementation of the invention on Java platform. Java is an object oriented language. See also 4:32-38).



Regarding claim 6, NZ1 teaches the method of claim 5 further comprising creating a response message object with a response message class (Zhang, 4:18-31 - implementation of the invention on Java platform. Java is an object oriented language. See also 4:32-38).

Regarding claim 10, NZ1 teaches the method of claim 1 wherein said testing of each of said one or more software components is performed by a servlet (Zhang, 5:28-37).

Regarding claim 7, Naganathan teaches the method of claim 1.

Naganathan does not explicitly teach such method wherein said response message is an XML document.

However, Zhang, in analogous art, directed to distributed test framework, teaches a method wherein said response message is an XML document (7:50-59 - an Extensible Markup Language (XML) formatted messages).

Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to combine the teachings of Zhang regarding implementation of Extensible Markup Language (XML) formatted messages with the teachings of Naganathan in order to make the message format completely compatible with Java and completely portable. Naganathan, combined with the XML teachings of Zhang, is hereinafter referred to as NZ2.

Regarding claim 8, NZ2 teaches the method of claim 7 wherein each of said request messages is an XML document (7:50-59 - an Extensible Markup Language (XML) formatted messages).

Claims 14-18 and 20 are rejected in view of the above rejection of claims 4-8 and 10. Claims 14-18 and 20 are essentially the same as claims 4-8 and 10, except that they set forth the invention as a computer program product rather than a method, as do claims 4-8 and 10.

Claims 24-28 and 30 are rejected in view of the above rejection of claims 4-8 and 10. Claims 24-28 and 30 are essentially the same as claims 4-8 and 10, except that they set forth the invention as a system rather than a method, as do claims 4-8 and 10.

10. **Examiner's note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objection made. Applicant must show how the amendments avoid such references and objections. See 37 CFR § 1.111(c).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vitali Korobov whose telephone number is 571-272-7506. The examiner can normally be reached on Mon-Friday 8a.m. - 4:30p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571)272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/V. K./  
Examiner  
Art Unit 2155  
06/20/08

/saleh najjar/  
Supervisory Patent Examiner, Art Unit 2155